

1  
2  
3 **So Ordered.**



*Patricia C. Williams*  
Patricia C. Williams  
Bankruptcy Judge

4 **Dated: November 16th, 2012**  
5  
6  
7  
8  
9

10 UNITED STATES BANKRUPTCY COURT  
11 EASTERN DISTRICT OF WASHINGTON

12 In re:

13 LLS AMERICA, LLC,

14 Debtor.

No. 09-06194-PCW11

15  
16 BRUCE P. KRIEGMAN, solely in  
17 his capacity as court-appointed  
Chapter 11 Trustee for LLS America,  
LLC,

18 Plaintiff,

Adv. No. 11-80130-PCW

19 vs.

20 THEODORE SCHULTZ and  
21 BETTY SCHULTZ,

22 Defendants.

MEMORANDUM DECISION RE:  
DEFENDANTS THEODORE AND  
BETTY SCHULTZ'S MOTION TO  
DISMISS (ECF NO. 8)

23 This adversary is one of hundreds commenced by the trustee of the LLS America,  
24 LLC ("LLS America") bankruptcy estate, which adversaries seek, pursuant to 11 U.S.C.  
25 § 548 and other causes of action, to recover money paid by the debtor to certain lenders  
26 or investors as part of an alleged Ponzi scheme conducted by the debtor. Defendants  
27 Theodore and Betty Schultz filed a motion to dismiss on December 18, 2011, ECF No.  
28 8.

MEMORANDUM DECISION RE: . . . - Page 1

1 In a similar adversary, *Kriegman v. Cooper*, No. 11-80093-PCW, a written  
2 decision was entered on July 2, 2012, ECF No. 146, regarding similar motions to dismiss  
3 and an oral decision was rendered on May 24, 2012, ECF No. 118, on the issue of  
4 pleading fraud with particularity (“Previous Decision”). The issues regarding dismissal  
5 raised in the subject motion are the same as those raised in the Previous Decision. Many  
6 of the facts in the Previous Decision are relevant to the subject motion.

7 By affidavit of Duane Swinton (ECF No. 18), the trustee presented evidence in  
8 this case that the defendants loaned or invested \$192,000 (CAN) and \$5,000 (USD) and  
9 13 promissory notes were issued. In 286 distributions occurring from November 2000  
10 to August 2008, the defendants received \$339,873.93 (CAN) and \$95,333.33 (USD).  
11 According to the trustee, the defendants filed proofs of claims in the amount of \$128,917  
12 (CAN) and \$38,524 (USD) in the underlying LLS America case. By declaration (ECF  
13 No. 11), the defendants presented evidence that they reside in Canada, rarely travel to  
14 the United States, and “virtually all” promissory notes listed a Canadian entity as  
15 borrower with distributions primarily made from Canadian entities. The declaration  
16 further states that the loans or investments were solicited in Canada, but no details were  
17 provided regarding the manner of the solicitation.

18 The grounds for dismissal in the subject motion are: (1) ineffective service of  
19 process; (2) improper extraterritorial application of United States bankruptcy law; and  
20 (3) failure to state the alleged fraud with particularity as required by Fed. R. Civ. P.  
21 (9)(b). The reasoning regarding the denial of dismissal based on those grounds is set  
22 forth in the Previous Decision and is applicable to the subject motion.

23 As in the Previous Decision, one basis for the request to dismiss is the lack of  
24 personal jurisdiction. As articulated in the Previous Decision, the filing of a proof of  
25 claim is a consent to jurisdiction to adjudicate that claim and the related action brought  
26 by the trustee of the LLS America estate under 11 U.S.C. § 548. The reasoning regarding  
27 the denial of dismissal based upon a consent to personal jurisdiction is set forth in the  
28

1 Previous Decision and is applicable to the subject motion, which is **DENIED**. Counsel  
2 for the defendants shall submit an order consistent with this decision.

3  
4 ///END OF MEMORANDUM DECISION///  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28